



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R01-OAR-2021-0790; FRL-9265-02-R1]

Outer Continental Shelf Air Regulations; Consistency Update for Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Massachusetts is the designated COA. The Commonwealth of Massachusetts' requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the Federal OCS air regulations.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0790. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: CareyAnne Howlett, Air and Radiation Division, U.S. Environmental Protection Agency, EPA Region 1, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA 02109, (617) 918-1702, Howlett.careyanne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On September 4, 1992, the EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located

¹ The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792), for further background and information on the OCS regulations.

in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On November 23, 2021 (86 FR 66509), the EPA published a notice of proposed rulemaking (NPRM) proposing to incorporate various Massachusetts air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to the EPA to be considered for incorporation by reference in 40 CFR part 55. EPA's NPRM was initiated in response to the submittal of an NOI on September 9, 2021 by Sunrise Wind, LLC. However, EPA also received an NOI on November 5, 2021 from Revolution Wind, LLC, an NOI on January 28, 2022 from New England Wind, LLC, and an NOI on May 31, 2022 from Mayflower Wind Energy, LLC. In accordance with 40 CFR 55.5, Massachusetts is the designated COA for each of these projects.

Upon receipt of the subsequent NOI's from Revolution Wind, LLC, New England Wind, LLC, and Mayflower Wind Energy, LLC, EPA conducted a consistency review in accordance with regulations at 40 CFR 55.12. Since EPA's November 23, 2021 NPRM, Massachusetts revised the regulations at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions) and 310 CMR 7.40 (Low Emission Vehicle Program), effective December 30, 2021.² EPA previously determined that the regulations at 310 CMR 7.40 (Low Emission Vehicle Program) were not applicable to OCS sources and did not propose to incorporate this section of 310 CMR 7.00 into part 55 as part of the November 23, 2021 NPRM. Although EPA's NPRM proposed to incorporate by reference the definitions located at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions), Massachusetts Department of Environmental Protection's (MassDEP's) most recent revisions to 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions)

² The revised regulations to 310 CMR 7.00 and 310 CMR 7.40 are available online at <https://www.mass.gov/regulations/310-CMR-700-air-pollution-control#recently-promulgated-amendments>.

were related to the amendments to the regulations at 310 CMR 7.40 (Low Emission Vehicle Program). EPA has reviewed the recent amendments to the Massachusetts regulations at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions) and determined that these changes are non-substantive revisions as they relate to OCS sources, and that it is not necessary to propose an additional consistency update at this time. Therefore, this final action will incorporate by reference the Massachusetts regulations at 310 CMR 7.00 that were effective March 5, 2021 as proposed in the NPRM. In addition, this final action will satisfy EPA's obligation under § 55.12 to conduct a consistency review for the subsequent NOI's received from Revolution Wind, LLC, New England Wind, LLC, Mayflower Wind Energy, LLC.

The EPA reviewed the rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, the EPA has excluded administrative or procedural rules,³ and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.

Section 328(a) of the CAA requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a

³ Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where the EPA has not delegated authority to implement and enforce part 55, the EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

result, the EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance or certain requirements of the CAA.

Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

The specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the November 23, 2021 NPRM. No comments were received on the NPRM.

II. Final Action

The EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the Commonwealth of Massachusetts will be the COA. The rules that the EPA is taking final action to incorporate are applicable provisions of: (1) 310 CMR 4.00: Timely Action Schedule and Fee Provisions; (2) 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; and (3) 310 CMR 7.00: Air Pollution Control, as amended through March 5, 2021. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into 40 CFR part 55 for Massachusetts. This action will have no effect on the provisions of 310 CMR 8.00 that were not subject to changes by Massachusetts and were also previously incorporated by reference into part 55 through EPA's November 13, 2018 rulemaking. *See* 83 FR 56259; November 13, 2018.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of "Commonwealth of Massachusetts Requirements Applicable to OCS Sources," dated March 5, 2021, which provides the text of the MassDEP air rules in effect as of March 5,

2021 that would apply to OCS source. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by the EPA. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249.⁴ This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

⁴ OMB's approval of the information collection requirement (ICR) can be viewed at www.reginfo.gov.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 4, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

Part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(11)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

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(e) * * *

(11) * * *

(i) * * *

(A) Commonwealth of Massachusetts Requirements Applicable to OCS Sources, March 5, 2021.

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3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading “Massachusetts” to read as follows:

Appendix A to Part 55 – Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

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MASSACHUSETTS

(a) * * *

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, March 5, 2021, Commonwealth of Massachusetts – Department of Environmental Protection.

The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

310 CMR 4.00: TIMELY ACTION SCHEDULE AND FEE PROVISIONS

Section 4.01: Purpose, Authority and General Provisions (Effective 5/1/2020)

Section 4.02: Definitions (Effective 5/1/2020)

Section 4.03: Annual Compliance Assurance Fee (Effective 5/1/2020)

Section 4.04: Permit Application Schedules and Fee (Effective 5/1/2020)

Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 5/1/2020)

310 CMR 6.00: AMBIENT AIR QUALITY STANDARDS FOR THE COMMONWEALTH OF MASSACHUSETTS

Section 6.01: Definitions (Effective 6/14/2019)

Section 6.02: Scope (Effective 6/14/2019)

Section 6.03: Reference Conditions (Effective 6/14/2019)

Section 6.04: Standards (Effective 6/14/2019)

310 CMR 7.00: AIR POLLUTION CONTROL

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/5/2021)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/5/2021)

Section 7.02: U Plan Approval and Emission Limitations (Effective 3/5/2021)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/5/2021)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/5/2021)

Section 7.05: U Fuels All Districts (Effective 3/5/2021)

Section 7.06: U Visible Emissions (Effective 3/5/2021)

Section 7.07: U Open Burning (Effective 3/5/2021)

Section 7.08: U Incinerators (Effective 3/5/2021)

Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/5/2021)

Section 7.11: U Transportation Media (Effective 3/5/2021)

Section 7.12: U Source Registration (Effective 3/5/2021)

Section 7.13: U Stack Testing (Effective 3/5/2021)

Section 7.14: U Monitoring Devices and Reports (Effective 3/5/2021)

Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/5/2021)

Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOX) (Effective 3/5/2021)

Section 7.24: U Organic Material Storage and Distribution (Effective 3/5/2021)

Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/5/2021)

Section 7.26: Industry Performance Standards (Effective 3/5/2021)

Section 7.60: U Severability (Effective 3/5/2021)

7.70: Massachusetts CO Budget Trading Program (Effective 3/5/2021)

7.71: Reporting of Greenhouse Gas Emissions (Effective 3/5/2021)

7.72: Reducing Sulfur Hexafluoride Emissions from Gas-insulated Switchgear (Effective 3/5/2021)

Section 7.00: Appendix A (Effective 3/5/2021)

Section 7.00: Appendix B (Effective 3/5/2021)

Section 7.00: Appendix C (Effective 3/5/2021)

310 CMR 8.00: THE PREVENTION AND/OR ABATEMENT OF AIR POLLUTION EPISODE AND AIR
POLLUTION INCIDENT EMERGENCIES

Section 8.01: Introduction (Effective 3/9/2018)

Section 8.02: Definitions (Effective 3/9/2018)

Section 8.03: Air Pollution Episode Criteria (Effective 3/9/2018)

Section 8.04: Air Pollution Episode Potential Advisories (Effective 3/9/2018)

Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 3/9/2018)

Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 3/9/2018)

Section 8.07: Emission Reductions Strategies (Effective 3/9/2018)

Section 8.08: Emission Reduction Plans (Effective 3/9/2018)

Section 8.15: Air Pollution Incident Emergency (Effective 3/9/2018)

Section 8.30: Severability (Effective 3/9/2018)

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